

C O P Y

88-52

NEW HAMPSHIRE LAW LIBRARY

1952

SEP 03 1998

Oct. 29

CONCORD, N.H.

Mr. Leonard S. Will
Business Supervisor
Department of Administration and Control
State House

Dear Mr. Will:

You have inquired as to whether or not milk, sold at the State Hospital to employees of the Hospital, who are required to be on the premises by the nature of their work and as part of their compensation come under the so-called "maintenance plan", must be sold to them at retail prices established by the Milk Control Board, or whether this milk may be sold to them in accordance with Rule V, section 2, Class C, subdivision b of the Rules of the Division of Personnel as adopted by Governor and Council November 1951. This subdivision states: "Residents of apartments and houses may secure food from the Commissary for their own use. These employees shall pay for such provisions as they receive at cost."

Under the provisions of the Revised Laws, chapter 196, the price of milk sold within the State of New Hampshire is placed under the control of the Milk Control Board. Under the provisions of section 6 of said chapter 196, the Milk Control Board has the authority to fix the price of milk within designated markets. A cursory examination might indicate that the practice of the State in selling milk to certain State employees at cost, which price is less than the retail price, would violate the provisions of chapter 196. It is my opinion that such is not the case.

Regardless of the stated purposes in the fixing of milk prices in chapter 196, the statute in essence is a price fixing law and thus comparable to fair trade laws. State institutions in selling milk to certain employees at cost are not competing with other milk producers. The persons who may buy from the State Commissaries are limited to those State employees who are quartered on the institutional grounds. Further, the State as such is nowhere specified within the terms of chapter 196 as either a person, distributor or producer and it would be straining the terms of the statute to include the State within the definitions.

I therefore feel that the practice of selling milk to certain employees of State institutions at cost is permissible.

Very truly yours,

ED:EM

Henry Dowse, Jr.,
Assistant Attorney General